Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services	)	WT Docket No. 96-162

REPLY COMMENTS OF RADIOFONE, INC.

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October 24, 1996

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SUMMARY

Radiofone, Inc. (Radiofone), by its attorneys, hereby files these Reply Comments in response to the Comments filed concerning the Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, FCC 96-319, released Aug. 13, 1996, in the captioned proceeding. Radiofone and many commenters oppose any relaxation or elimination of the structural separation requirements for BellSouth's cellular services. In its Comments, Radiofone discussed BellSouth's anticompetitive acts against Radiofone. Radiofone has provided further evidence of BellSouth's anticompetitive acts herein. Radiofone respectfully submits that the Commission should retain its safeguards to protect competition, at least until BellSouth no longer occupies the dominant position it now enjoys in its local exchange service areas.

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I. The Record Supports Continued Structural Separation in Order to Prevent Anticompetitive Conduct by BellSouth

BellSouth asserts that there is no record evidence of anticompetitive acts by BOCs.[1] BellSouth is wrong.

In Radiofone's Comments in this proceeding, Radiofone described numerous incidents of BellSouth's discriminatory and anticompetitive conduct.[2] In particular, Radiofone noted that its affiliate in Baton Rouge, Louisiana was not able to achieve interconnection with BellSouth

[1] E.g., BellSouth Comments at 15.

[2] Radiofone Comments at 2-4.

until the Department of Justice informally intervened.[3] Other anticompetitive practices wherein corporate structures of BellSouth affiliates have been utilized anticompetitively are detailed in a formal complaint proceeding, Radiofone, Inc. v. BellSouth Mobility, Inc., File No. E-88-109, filed Aug. 2, 1988.

There are further instances of interconnection abuses by BellSouth, however. For example, on July 21, 1989, Radiofone requested information and costs relating to the connection of Radiofone's cellular system to the state's Centrex Network.[4] Almost one year later, on May 15, 1990, BellSouth refused to connect Radiofone, citing a proposed conversion from a usage-based service to a flat-rated service.[5] Radiofone submits that BellSouth's position is wholly unjustified.

Additionally, the FCC was made aware of BellSouth's anticompetitive practices in a radio licensing proceeding during 1979 to 1980. At first, Radiofone opposed BellSouth's application for radio facilities, and successfully persuaded the FCC to conduct a hearing to investigate BellSouth's anticompetitive interconnection practices.[6] Radiofone subsequently filed a Motion to Enlarge Issues.[7] The Motion demonstrated BellSouth's clear intent to engage in predatory pricing and cross-subsidization. The FCC granted the Motion.[8] But when faced with the prospects of an in-depth hearing as to its anticompetitive conduct, BellSouth withdrew its application.[9] As stated by the FCC, "[t]ermination of [that] proceeding by [BellSouth's] chosen

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[3] Id. at 2.

[4] Letter from Harrell Freeman to Curt Heximer, South Central Bell, dated July 21, 1989 (enclosed in Attachment A).

[5] Letter from C.D. Heximer, South Central Bell to Harrell Freeman, Radiofone, dated May 15, 1990 (enclosed in Attachment A).

[6] Memorandum Opinion and Order (South Central Bell Tel. Co.), FCC 79-593, Oct. 22, 1979, para. 14 (enclosed in Attachment B).

[7] Enclosed in Attachment B.

[8] Memorandum Opinion and Order, March 31, 1980 (enclosed in Attachment B).

[9] Memorandum Opinion and Order, FCC 80M-1392, Aug. 6, 1980 (enclosed in Attachment B).

route . . . [left] unresolved several very serious issues [then] outstanding against" BellSouth.[10] Thus, the FCC never resolved Radiofone's concerns on the record in that proceeding.

Finally, Radiofone is aware of a BellSouth Policy Statement concerning a cellular interconnection rate case that was pending before the Louisiana Public Service Commission (PSC). The BellSouth Policy Statement restrained BellSouth Mobility, Inc. (BMI) from taking any positions in the cellular interconnection rate case that were inconsistent with the positions of BMI's LEC affiliate. Certain officials of BMI had expressed views similar to those of other wireless carriers on issues such as mutual compensation and costs of interconnection. By restraining BMI from fully participating in proceedings before the PSC, BellSouth's LEC muzzled an important viewpoint on the issue. Thus, even with structural separation, BellSouth abused the regulatory process.

The first and third examples given above have never been presented in any proceeding before the Commission, and the second example was not presented in any recent proceedings. As discussed below, the provision of these three examples (as well as those discussed in Radiofone's Comments) negate the presumptive application of prior decisions concerning the need for safeguards (such as the Commission's decision not to impose structural separation on BOC provision of PCS), because those decisions were made without the benefit of this evidence.

BellSouth conveniently forgets about its own anticompetitive and discriminatory acts, and asserts that there is a lack of evidence of interconnection abuses,[11] price discrimination,[12] cross-subsidization,[13] and the leveraging of market power,[14] must be disregarded. BellSouth is wrong. This proceeding contains new evidence that must be examined de novo.

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[10] Id. para. 4.

[11] BellSouth Comments at 26.

[12] Id. at 29.

[13] Id. at 37.

[14] Id. at 33.

In an attempt to prevent an examination of new evidence, BellSouth erroneously asserts that the Sixth Circuit "held that the record in the PCS docket was adequate to determine whether to eliminate" the cellular structural separation rule.[15] But that was not the "holding" of Cincinnati Bell v. FCC.[16] The Sixth Circuit noted that the FCC stated that the record was insufficient to determine whether to eliminate the cellular structural separation requirement.[17] The Sixth Circuit "held" that because the FCC did not justify its disparate treatment of cellular and PCS, the FCC's decision was arbitrary and capricious.[18] The Sixth Circuit ordered the FCC to reexamine the need for the structural separation requirement.[19] The Sixth Circuit did not state that the existing record was sufficient to make that determination. Thus, the Commission must give due consideration to the evidence of BellSouth's discriminatory and anticompetitive conduct as provided by Radiofone herein.

In its Comments, Radiofone also noted other instances where BellSouth discriminated against small long distance companies and enhanced services providers.[20] These acts have all occurred under the Commission's structural separation requirements. Without structural separation, BellSouth's ability to engage in anticompetitive mischief would be exacerbated. Thus, there is hardly a public interest basis for relaxing or eliminating structural separation.

II. Analysis of Continued Need for Structural Separation

Additional reasons for retaining structural separation were given in Radiofone's Comments. These include the facts that: (a) BellSouth continues to control bottleneck facilities;

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[15] Id. at 16.

[16] 69 F.3d 752 (6th Cir. 1995).

[17] Id. at 768.

[18] Id.

[19] Id.

[20] Radiofone Comments at 3-4.

(b) the Louisiana PSC no longer has rate regulatory authority; and (c) BellSouth may now provide one-stop shopping for 20 MHz of broadband PCS, local exchange service and cellular service.[21] BellSouth has done nothing to disprove these facts.

BellSouth asserts that cellular services should not be subject to structural separation because: (a) PCS services are not subject to structural separation; and (b) "[t]here can be no reasoned explanation" for the disparate treatment of cellular and PCS.[22] However, BellSouth's conduct itself provides such a "reasoned explanation" -- BellSouth has repeatedly behaved anticompetitively toward cellular carriers. Even U S WEST admits that current differences in cellular and PCS may warrant different regulatory treatment.[23] But BellSouth envisions only two alternatives: structural separation for cellular and PCS; or no structural separation at all. The Commission need not choose between these two extremes when BellSouth's actions have provided ample justification for retaining structural separation requirements for cellular services.

BellSouth also erroneously asserts that the Sixth Circuit affirmed FCC statements concerning the similarity of PCS and cellular, and a Congressional requirement for symmetrical regulatory structure.[24] But the Sixth Circuit did not "affirm" those alleged statements. Their veracity was not at issue in Cincinnati Bell. The Sixth Circuit merely repeated those FCC statements as evidence that supported BellSouth's claims of disparate treatment.

In addition, Congress did not require strictly symmetrical regulation. As stated by the Commission, the Congressional intent was that "consistent with the public interest, similar services are accorded similar regulatory treatment."[25] Because BellSouth has demonstrated its propensity to act anticompetitively toward non-affiliated cellular carriers, the public interest

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[21] Id. at 4-6.

[22] BellSouth Comments at 12.

[23] U S WEST Comments at 20.

[24] BellSouth Comments at 16.

[25] Second Report and Order (Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services), 9 FCC Rcd. 1411, 1417 (1994) (citing H.R. Rep. 103-213, 103rd Cong., 1st Sess. 494 (1993)) (emphasis added).

requires the Commission to deter such abuses in the future. Even if the resulting regulations were to apply to cellular services and not to PCS, the asymmetrical regulation readily may be justified by BellSouth's demonstrated abuses in the cellular arena. Thus, the asymmetrical regulation would be consistent with Congressional intent.

In another attempt to convince the Commission that there is no need for structural separation, BellSouth asserts that anticompetitive acts "would backfire, because they would promptly be brought to the Commission's attention and would result in prompt enforcement action."[26] This assertion is disproved by BellSouth's own actions. After Radiofone filed its complaint in 1988, BellSouth continued to engage in anticompetitive acts. As a result, Radiofone supplemented its complaint twice (in 1991 and 1995) to bring to the Commission's attention BellSouth's continuing pattern of anticompetitive abuses.[27]

BellSouth next attempts to ensure that structural separation is not extended to PCS by erroneously asserting that "the fact that structural separation is not needed for PCS is the law of the case" in Cincinnati Bell.[28] In doing so, BellSouth misconstrues the "law of the case" in Ohio Oil Co. v. Thompson, which it cites as providing the standards for determining the law of the case.[29] The Ohio Oil decision stands for the proposition that a decision on issues that are raised before the court is binding on an inferior court.[30] In Cincinnati Bell, the question of whether structural separation was needed for PCS was not at issue. The issue BellSouth presented was whether the Commission's decision to retain the structural separation requirement for cellular service was based on a sufficient record.[31] The court focused on the disparate

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[26] BellSouth Comments at 33.

[27] See Radiofone Comments at 2.

[28] BellSouth Comments at 14.

[29] 120 F.2d 831 (8th Cir. 1941).

[30] See 120 F.2d at 834.

[31] See Cincinnati Bell, 69 F.3d at 765-66.

treatment of cellular vis-à-vis PCS.[32] Its focus on disparate treatment arose due to the cellular issues that were before it. The court certainly did not decide PCS issues that were not before it. Thus, the holding in Cincinnati Bell does not prevent the Commission from adopting more stringent regulatory safeguards for PCS, if it were to determine that it needs to do so within the context of this proceeding.

BellSouth repeatedly reminds the Commission that nonstructural safeguards were found to be adequate for PCS, and that the record in the waiver proceedings did not provide evidence supporting cellular structural separation.[33] However, most of the evidence Radiofone has presented herein was not part of the record in the rulemaking proceeding concerning PCS safeguards, and was not part of the record in the waiver proceedings. Because the record in this proceeding contains evidence which supports continued cellular structural separation, the Commission may retain that requirement, and if needed, the Commission may adopt stricter regulations for BOC provision of PCS.

After trying to convince the Commission that rules need to be the same for cellular and PCS, BellSouth next asserts that there is no justification for treating BOCs differently from other LECs.[34] However, Radiofone has provided evidence herein that justifies the retention of structural separation requirements for BellSouth. And that evidence would support the retention of structural separation for BellSouth even if the Commission were to decide to eliminate structural separation for other BOCs.

Finally, BellSouth asserts that structural separation should not be retained if the costs outweigh the benefits.[35] As noted in Radiofone's Comments, Radiofone estimates that its

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[32] Id. at 765-68; see Comcast Cellular Comments at 8 ("Cincinnati Bell questioned the Commission's differing treatment of cellular and PCS, not whether structural separation was an appropriate means of reaching that end.").

[33] E.g., BellSouth Comments at 18, 20.

[34] Id. at 23.

[35] Id. at 16.

damages for the issues raised in its complaint proceeding are approximately $18 million.[36] And many of the anticompetitive abuses discussed above were not raised in that complaint proceeding. By comparison, BellSouth has not begun to quantify the cost of structural separation. And even if its costs were to approximate those of Radiofone, the balance still favors Radiofone because the result of BellSouth's abuses would be to deter competition from smaller carriers who are not as capable of bearing the costs.

III. Accounting Safeguards and Separate Affiliates Are Not Sufficient

For all of the foregoing reasons, structural separation must be retained. Any lesser alternatives, such as affiliate transaction rules, Part 64 cost allocation rules and the price cap rules, will increase BellSouth's ability to act anticompetitively while they diminish the Commission's ability to detect anticompetitive conduct. The Public Utilities Commission of Ohio (PUCO), CMT Partners, Comcast Cellular and MCI agree.[37]

BellSouth asserts that the only potential for price discrimination is through interconnection, and under the new Telecommunications Act, all LEC-CMRS interconnection agreements must be reduced to writing and reviewed by state officials.[38] Although Radiofone supports the requirement for interconnection agreements to be made public, they, alone, may not prevent BellSouth from engaging in the interconnection abuses discussed above. Other existing regulatory safeguards should be retained, not relaxed. If prevention is not effective, BOC competitors may be required to pursue remedies after the fact -- a process that requires time and resources that the competitors may not have. As stated by Comcast Cellular:

> After-the-fact enforcement of accounting rules, however, gives the BOC benefits of its actions and greatly harms the competitive market in the interim. The

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[36] Radiofone Comments at 3.

[37] PUCO Comments at 5-6; CMT Partners Comments at 2, 12 (combined operations would produce economies of scale not available to BOC competitors); Comcast Cellular Comments at 1; MCI Comments at 4.

[38] BellSouth Comments at 27.

> Commission cannot fail to take account of this wide gap in effectiveness as it could spell the difference between success or failure for the many new entrant in the wireless market.[39]

In sum, structural separation must be retained. Other safeguards are insufficient to protect competition.

IV. Joint Marketing and Sales Should Be Permitted Only Pursuant to Adequate Safeguards

Radiofone demonstrated that the structural separation requirements in Section 22.903 of the Commission's Rules are consistent with the joint marketing and sales provisions of Section 601(d) of the Telecommunications Act of 1996.[40]

BellSouth asserts that Section 601(d) does not allow for any restrictions on joint marketing and sales.[41] BellSouth claims that the phrase "Notwithstanding section 22.903 of the Commission's regulations . . . or any other Commission regulation" means that joint marketing and sales may not be limited by Commission regulations adopted in the future. This claim is wrong. Section 601(d) guarantees only that BOCs may engage in joint marketing and sales, and that Commission regulations may not prohibit them from doing so. However, the Commission has the authority to set the parameters within which BellSouth may engage in those actions.

Radiofone agrees that the Commission should impose a requirement that all joint marketing transactions among BellSouth's LEC operations and its CMRS operations, be reduced to writing and made available for public inspection.[42] Radiofone also supports the public disclosure of rates, terms and conditions of service in cases where the LEC is selling its affiliate's cellular service.[43] CMT Partners agree with the application of affiliate transaction

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[39] Comcast Cellular Comments at 6.

[40] Radiofone Comments at 8.

[41] BellSouth Comments at 35.

[42] Radiofone Comments at 8.

[43] Id. at 9.

rules and the nonregulated classification of joint marketing,[44] and MCI supports the public disclosure of rates, terms and conditions.[45] These regulations will constrain BellSouth's competitive advantage which arises from its ability to provide one-stop shopping. As the evidence of BellSouth's anticompetitive conduct concerning cellular services demonstrates, BellSouth is likely to take advantage of opportunities to engage in abuses, notwithstanding BellSouth's assertions to the contrary.[46]

BellSouth objects to reducing its agreements and rates to writing.[47] BellSouth argues that because Congress did not adopt such a requirement, BellSouth is not subject to it.[48] The Commission, nevertheless, has the authority to adopt such a requirement, as it has proposed and as is supported by commenters in this proceeding.

Moreover, the Congressional intent in adopting Section 601(d) was not to "lift the FCC's prohibition against the Bell operating telephone companies providing the cellular service."[49] Thus, it is clear that Section 601(d) of the Telecommunications Act did not eliminate the cellular separate subsidiary provision of Section 22.903 except to the extent that it could prohibit joint marketing and sales. The joint installation, maintenance and repair of BOC cellular and landline local exchange facilities -- that is, the "provision" of cellular service -- remains subject to the structural separation requirements of Section 22.903.[50]

Radiofone and MCI agree with the Commission's proposal to prohibit "one-of-a-kind" volume discounts for cellular service provided by the cellular affiliate to the LEC for sale to

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[44] CMT Partners Comments at 17.

[45] MCI Comments at 18.

[46] BellSouth Comments at 19.

[47] Id. at 38-39.

[48] Id.

[49] NPRM, n.103. Contra BellSouth Comments at 37.

[50] See AT&T Comments at 22; NPRM, para. 68.

the end user.[51] BellSouth contends that there is no need for regulations preventing such discounts because BOCs are prohibited from unjust and unreasonable discrimination by Section 202(a) of the Act.[52] Nevertheless, the explicit prohibition of "one-of-a-kind" discounts will make it clear that such conduct is unlawful.

Finally, BellSouth asserts that Section 601(d) permitted full "resale" by the LEC, not just selling pursuant to an agency agreement with the cellular affiliate.[53] BellSouth observes that the final version of Section 601(d) uses the term "sell" whereas the legislative history uses the term "resell" as well as "sell."[54] It is clear that by using the word "sell," Congress intended to permit the BOCs only to "sell" an affiliate's cellular service. Thus, the LEC should act as an agent for the cellular affiliate. By comparison, resale would entitle the LEC to the profits from the cellular service, mooting part of the need for separate affiliates, contrary to the Congressional intent to retain the structural separation requirements.

V. The CPNI Rule Should Be Kept as Is

Radiofone requested the Commission to retain the CPNI rule due to BellSouth's continued dominance of the local exchange market.[55] AT&T agrees that a BOC should not be able to use CPNI in its joint marketing, or disclose it to an affiliate, unless it makes the same CPNI available to all CMRS providers.[56]

Radiofone stated that the Commission should require that any oral or written requests made by BellSouth to use, disclose or permit access to CPNI must be requests only to make the

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[51] Radiofone Comments at 9; MCI Comments at 17-18.

[52] BellSouth Comments at 39.

[53] Id. at 39-40.

[54] Id. at 35-36.

[55] Radiofone Comments at 10-11.

[56] AT&T Comments at 23.

CPNI publicly available, and must not give the customer the option of making it available only to BellSouth's affiliates.[57] AirTouch similarly suggests that LECs be required to provide the opportunity for customers to authorize the provision of local exchange CPNI to third parties at the same time they seek to obtain written approval for LEC cross-marketing purposes.[58] PUCO also recognizes the name recognition advantages possessed by incumbent LECs.[59]

AirTouch, Comcast Cellular and Cox Communications further propose CPNI rules that are similar to the Letters of Agency required for changing a subscriber's primary interexchange carrier.[60] Radiofone supports this approach, especially if the Commission were to permit BOCs to obtain CPNI authorizations applicable only to BOC affiliates. Just as the Commission seeks to employ safeguards that would make discrimination detectable, a Letter-of-Agency-type requirement for CPNI would permit the Commission and competitors of the BOCs to determine whether the BOCs have engaged in discrimination or other anticompetitive acts in obtaining CPNI authorizations.

BellSouth proposes that all broadband CMRS providers should be subject to the same CPNI rules.[61] BellSouth asserts that subjecting only the BOCs and GTE to these requirements, and not AT&T and WorldCom, would be irrational.[62] BellSouth ignores the fact that the CPNI rules were adopted in recognition of the position the BOCs hold in their monopoly provision of local exchange service. CMRS providers that do not provide local exchange service in-region do not have access to CPNI of every residence and business in their service areas. Only the LECs do. The CPNI rules, as they require public disclosure (pursuant to Section 22.903)

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[57] Radiofone Comments at 10.

[58] AirTouch Comments at 7.

[59] PUCO Comments at 20.

[60] AirTouch Comments at 7; Comcast Cellular at 15; Cox Communications Comments at 8.

[61] BellSouth Comments at 52.

[62] Id. at 53.

and with the proposed additional requirements as discussed above, should apply only to LECs, and in particular, to BellSouth.

Although BellSouth is correct to point out that the CPNI provisions in Section 222 of the Telecommunications Act apply to all telecommunications carriers,[63] the Commission has the authority to adopt additional CPNI rules applicable only to BOCs in order to promote competition in the public interest.

VI. Section 22.903 Should Not Sunset

For the reasons given above, the Commission should not relax or eliminate the core structural separation requirements of Section 22.903. As stated in Radiofone's Comments, sunsetting Section 22.903 at the time that a BOC enters into interLATA services is inappropriate because the BOC may still have market power in its provision of local exchange services.[64] Radiofone suggested that the Commission wait 10 years before revisiting this issue.[65] MCI agrees that a decision to sunset the core structural separation requirements should not be made until after the BOCs lose all market power in the local exchange and CMRS markets.[66] PUCO similarly states that it is too early to establish a sunset date.[67]

By comparison, CMT Partners support the sunsetting of Section 22.903 upon BOC entry into the interLATA market.[68] CMT Partners do not consider the fact that the BOC may still have market power at that time.

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[63] Id. at 52.

[64] Radiofone Comments at 11.

[65] Id.

[66] MCI Comments at 19-20.

[67] PUCO Comments at 21.

[68] CMT Partners Comments at 17.

BellSouth asserts that the Commission should eliminate Section 22.903 immediately.[69] BellSouth cites to remarks of Rep. Burr stating that the FCC should review its separate subsidiary rule.[70] Rep. Burr notably did not state that the FCC should eliminate the separate subsidiary rule. Indeed, as noted above, Rep. Burr stated that Section 601(d) did not lift the FCC's prohibition against the Bell operating telephone companies providing cellular service.[71] Thus, the Commission is under no mandate to eliminate the structural separation requirement. The statements made by Rep. Burr and Cincinnati Bell require only that the Commission review that requirement.

VII. Joint Marketing and Billing Restrictions Should Apply to Other CMRS Services

AT&T and Comcast Cellular suggest that structural separation requirements be extended to the provision of all CMRS.[72] Radiofone supports this request. Radiofone's affiliates currently are the high bidders on several PCS licenses within BellSouth's telephone service areas, and the service areas of other BOCs. Given BellSouth's historical propensity for behaving anticompetitively toward Radiofone's cellular operations, Radiofone is concerned that BellSouth and other BOCs could engage in such abuses toward Radiofone's planned PCS operations. Structural separation for all CMRS provided by BOCs in their telephone service areas would help deter such abuses. The Commission therefore should deny BellSouth's request to provide CMRS on a structurally integrated basis.[73]

Several commenters propose rules that would facilitate the detection of anticompetitive behavior. AirTouch suggests that LECs should disclose more fully the costs and revenues associated with their PCS operations, so that cross-subsidization could be more readily

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[69] BellSouth Comments at 41-44.

[70] Id. at 42.

[71] See NPRM, n.103.

[72] See AT&T Comments at 2; Comcast Cellular at 3.

[73] BellSouth Comments at 51.

identified.[74] AirTouch also requests that any non-structural safeguards that are adopted for PCS should also be used for paging.[75] AT&T suggests comprehensive annual audits.[76] If the Commission were to eliminate the structural separation requirements, Radiofone supports the adoption of requirements such as those proposed by AirTouch and AT&T.

Radiofone requested the Commission to extend the restrictions for joint marketing, sales and joint billing of BellSouth's local exchange and cellular services, to BellSouth's provision of PCS and other CMRS services in BellSouth's LEC service areas.[77] Radiofone also requested the restrictions to apply to PCS regardless of whether BellSouth holds only 10 MHz or more than 10 MHz of PCS spectrum.[78] However, BellSouth requests an exception for 10 MHz of any cellular, PCS or SMR spectrum.[79] But BellSouth's ability to behave anticompetitively is not dependent on the amount of spectrum it possesses. Additionally, under BellSouth's proposal, BellSouth could hold 35 MHz of cellular spectrum -- 25 MHz of which would be subject to the joint marketing and sales restrictions, and 10 MHz of which would be exempted from those restrictions. Detection of violations of the Commission's rules would be difficult, at best. Furthermore, BellSouth provides no justification for setting the exception at 10 MHz of spectrum. For these reasons, the Commission should deny BellSouth's request for a 10 MHz exception.

BellSouth also suggests that any competitive safeguards sunset within three years after they become effective.[80] This three-year period is based on BellSouth's undocumented

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[74] AirTouch Comments at 4-6.

[75] Id. at 6.

[76] AT&T Comments at 25.

[77] Radiofone Comments at 12.

[78] Id. at 12.

[79] BellSouth Comments at 48.

[80] Id. at 55.

predictions of the development of competition. Pursuant to Cincinnati Bell, the Commission should not adopt a sunset period that is based on unsupported predictions.[81]

Until BellSouth no longer occupies the dominant position it now enjoys in its LEC service areas, safeguards must be in place to protect competition. No rigid sunset period should be adopted sooner than ten years from now, as Radiofone suggested.[82] This ten-year period is based on Commission build-out requirements and the ten-year period during which AT&T remained dominant after competition entered the interexchange market.

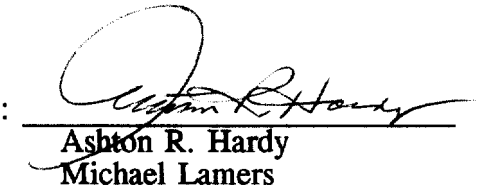
Conclusion

For the foregoing reasons, the Commission should retain the structural separation requirements for BellSouth's provision of cellular service. As demonstrated in Radiofone's Comments, in its formal complaint proceeding, and herein, BellSouth has repeatedly abused its dominant position in local exchange and cellular services. Structural separation would help deter such abuses in the future, and if extended to PCS, would help prevent BellSouth from initiating abuses directed toward that service. Additionally, the Commission should adopt rules to deter anticompetitive abuses of BellSouth's ability to jointly market and sell CMRS and LEC services. Finally, Radiofone requests the Commission to retain the CPNI disclosure requirements, and add the Letter-of-Agency-type rules proposed by Comcast Cellular.

[81] 69 F.3d at 764.

[82] Radiofone Comments at 12.

Respectfully submitted,
RADIOFONE, INC.

By: 

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Its Attorneys

ATTACHMENT A

South Central Bell

Canal Place One
365 Canal Street
Room 1550
New Orleans, Louisiana 70140

May 15, 1990

Mr. Harrell Freeman
Radiofone, Inc.
3100 Fifth Street
Metairie, Louisiana 70002

Dear Mr. Freeman:

This letter is in reference to your correspondence regarding the connection of Radiofone's cellular system to the Louisiana Centrex Network in New Orleans and Baton Rouge.

After extensive review, it has been determined that we will be unable to provide the service as requested. As you know discussions are under way to negotiate a new cellular agreement which is usage based. Completion of the proposed special arrangement would result in the connection of a flat-rated service (ESSX) to a usage-based service (cellular). We would lose the capability to measure and therefore bill the minutes of use as a result.

I regret we were unable to comply with your request. Should you wish to discuss this matter further please feel free to call me at 528-2818.

Sincerely,

Curt Heximer

C. D. Heximer
Independent Relations
Representative

CELLULAR ONE by Radiofone

Confidential and Proprietary

July 21, 1989

Mr. Curt Heximer
South Central Bell
365 Canal Street
One Canal Place
Suite 1550
New Orleans, LA 70140

Dear Mr. Heximer:

We are interested in connecting to the state's Centrex Network with our cellular system. We wish to connect the New Orleans Centrex to our MTSO and the Baton Rouge Centrex to our location at One American Place. Assume necessary permission from the state and others. This request is to determine the price, availabilility and method of interconnection. Please quote prices to connect the Centrex in the New Orleans area to our MTSO at One Shell Square. Also, please quote the price to connect Baton Rouge. We prefer four-wire MF trunks, but please provide all alternate offerings that can be used.

Time is of the essence in helping us formulate our plans.

Please limit the distribution of this letter and request to a need-to-know basis. It is especially important to us that this information not be transferred to your sister company, Bell South Mobility (or any of its affiliates), either directly or indirectly.

Sincerely,

RADIOFONE, INC.

Harrell Freeman

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3939 N. Causeway Blvd.
Metairie, LA 70002
(504) 837-9540
1-800-237-2571

Business Office:
3100 Fifth Street
Metairie, LA 70002
(504) 837-8330

Finance:
P.O. Box 8887
Metairie, LA 70011
(504) 837-7362

ATTACHMENT B

Before the
Federal Communications Commission
Washington, D. C. 20554

FCC 79-593
14559

In re Applications of	)	
SOUTH CENTRAL BELL TELEPHONE COMPANY	)	CC Docket 79-250 File No. 21870-CD-P-(4)-75
For construction permit for modification of DPLMRS station KKI454 at Houma, Louisiana, to replace equipment, add channels, and to furnish Improved Mobile Telephone Service	)	
SOUTH CENTRAL BELL TELEPHONE COMPANY	)	CC Docket No. 79-251 File No. 20437-CD-P-(13)-75
For construction permit for modification of DPLMRS station KKD292 at New Orleans, Louisiana, to add channels and to furnish Improved Mobile Telephone Service	)	

MEMORANDUM OPINION AND ORDER

Adopted : September 27, 1979; Released: October 22, 1979

By the Commission: Commissioner Lee absent.

1. Presently before the Commission are the above-captioned applications filed by South Central Bell Telephone Company (SCB) to improve its mobile telephone facilities at Houma, Louisiana, and at New Orleans, Louisiana. Petitions to deny the two applications were filed by James D. and Lawrence D. Garvey d/b/a Radiofone (petitioner or Radiofone). Also before the Commission is SCB's "Motion to Strike" Radiofone's supplement to its petitions to deny. On September 11, 1974, SCB applied for a construction permit to modify Domestic Public Land Mobile Radio Service (DPLMRS) station KKD292 at New Orleans, Louisiana (the New Orleans application), to add channels and to convert from manual to a fully automated Improved Mobile Telephone Service (IMTS).1/ A petition to deny the application was filed by Radiofone, and responsive pleadings have been filed thereto.

1/ Improved Mobile Telephone Service (IMTS) automatically scans the channels available to a radio telephone caller and selects an unoccupied channel for immediate placement of the call.